

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

James E. Johns and Karen L. Johns,) Case No. 3:17-cv-0924
Plaintiffs,)
v.) Judge Trauger
The City of Franklin, Tennessee,)
Elijah Valimont, and Adam Wade,)
Defendants)

DENIAL OF DEFAULT

Pending is Plaintiffs' Motion for Default Judgment against Defendants (Docket Entry No. 8). The Clerk will construe the motion as a request for entry of default pursuant to Federal Rule of Civil Procedure (FRCP) 55(a), as no default judgment may be granted pursuant to FRCP 55(b) until default has been entered pursuant to FRCP 55(a). *U.S. v. \$22,050.00 U.S. Currency*, 2008 WL 4093066 at page 3 (M.D. Tenn. Aug. 26, 2008); *Ramada Franchise Systems, Inc. v. Baroda Enterprises, LLC*, 220 F.R.D. 303, 305 (N.D. Ohio 2004).

Defendants have been served and returns of service have been filed with the Court (Docket Entries 5-7). Although counsel has entered an appearance on behalf of Defendants (Docket Entries 10 & 11), no answer or other responsive pleading has been filed and Defendants appear to be in default. Defendants are cautioned that if no responsive pleading is filed, the Clerk will enter default against them. However, to proceed with a motion for entry of default, Plaintiffs must provide an affidavit of military service that satisfies the requirements of the Servicemembers Civil Relief Act of 2003 (50 App. U.S.C. 501 et seq.). The Servicemembers Civil Relief Act requires that affidavits be submitted that “state whether or not the Defendant is in military service **and showing facts necessary to support the affidavit**” (emphasis added). Information on the military status of an individual can be obtained at the

Department of Defense website at <https://www.dmdc.osd.mil/appj/scra/>. Factors such as the age of Defendant if beyond the age for service or full-time employment in another position can be considered.

Based upon the foregoing, Plaintiffs' motion is denied. Plaintiffs may file a renewed motion for entry of default along with the required affidavit. If default is entered, Plaintiffs may then proceed with a motion for default judgment pursuant to Federal Rule of Civil Procedure 55(b). Given that Plaintiffs' motion for default judgment has been denied, their motion to approve consent judgment and for a hearing on damages (Docket Entry No. 9) is moot and the docket clerk is instructed to terminate it as pending on the docket.

s/ *Keith Throckmorton*
Keith Throckmorton
Clerk of Court